

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

INITIATIVE PETITION

To the Honorable Robin Carnahan, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and \_\_\_\_\_ County (or city of St. Louis), respectfully order that the following proposed law (or amendment to the constitution) shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 4th day of November, 2008, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and \_\_\_\_\_ County (or city of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

Shall Missouri law be amended to:

- make it illegal for a doctor to provide a woman with an abortion at any time during her pregnancy without extensive and documented emotional, psychological, physical, situational, and demographic evaluations unless the doctor determines that the procedure is necessary to prevent imminent death or serious medical risk; and
- make it illegal for any person, other than a licensed physician or licensed pharmacist acting with a prescription, to assist a woman to terminate her own pregnancy and allow lawsuits with minimum damages of \$800,000, plus attorney's fees, regardless of any proof of injury?

It is estimated this proposal will have no costs or savings to state or local governmental entities

CIRCULATOR'S AFFIDAVIT STATE OF MISSOURI, COUNTY OF \_\_\_\_\_,

I, \_\_\_\_\_, being first duly sworn, say (print or type name of signers)

NAME (signature)	Date Signed	REGISTERED VOTING ADDRESS (Street) (City, Town or Village)	Zip Code	Cong. Dist.	NAME (printed or typed)
1.					
2.					
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signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and \_\_\_\_\_ County.

.....  
Signature of Affiant (Person obtaining signatures)

.....  
Address of Affiant

Subscribed and sworn to before me this ..... day of ....., A.D.

.....  
Signature of Notary

Notary Public (Seal)

My commission expires .....

.....  
Address of Notary

## THE PROPOSED STATUTE

*Be it enacted by the people of the State of Missouri:*

Title XXXVI of the Revised Statutes of Missouri is amended to add a new Chapter which reads as follows:

**SECTION 1. Short title.** This act shall be cited as “Prevention of Coerced and Unsafe Abortions Act.”

**SECTION 2. Definitions.** The following words and phrases shall have the meanings ascribed in this chapter unless the context clearly indicates otherwise:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman with an intention other than to increase the probability of a live birth.

(b) "Abortion provider" means any physician or entity that performs or provides abortions or any person or entity that refers for abortions as a normal part of their business more than five (5) times per year.

(c) “Complication associated with abortion” means any adverse physical, emotional or psychological reaction that is statistically associated with abortion as defined by  $P < 0.05$ , meaning there is less than a 5 percent chance that the results were due to sampling error.

(d) "Medical emergency" means that condition which, on the basis of the physician's reasonable clinical judgment, so complicates the medical condition of the pregnant woman as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of a major bodily function.

(e) “Risk factor” means any factor, including any physical, psychological, emotional, demographic, or situational factor that is statistically associated at a level of  $P < 0.05$  with one or more complications associated with abortion wherein the statistically significant association was published no less than twelve months prior to the abortion in any peer reviewed journals indexed by the National Library of Medicine's search services, PubMed or MedLine, or in any journal included in the Thomson Scientific Master Journal List.

(f) "Self-induced abortion" means any abortion or menstrual extraction attempted or completed by a woman on her own body.

**SECTION 3. Screening requirements.** In addition to whatever requirements exist under the common or statutory law of this state, it is an act of medical negligence to perform or refer for an abortion, except in the case of a medical emergency, unless all of the following are true:

(a) Before the physician recommends or performs an abortion, a licensed physician, licensed psychologist, licensed social worker, or licensed registered nurse has (1) evaluated the woman to identify any pressures to consent to the abortion and the presence of any risk factors and informed her and the physician of the results of this evaluation in writing, which shall include at least a checklist identifying both the positive and negative results of the evaluation for each risk factor and a copy of the evaluation has been retained in the patient's permanent record and (2) provided a written statement to the patient and the physician certifying, to the best of the qualified person's knowledge, that the patient understands and appreciates the significance of the risk factors discussed and is seeking the abortion without duress or coercion.

(b) In the event that any risk factors were identified, the patient has been informed of each complication that is associated with each risk factor that was identified, and the explanations of the risks and associated complications has included quantifiable risk rates, whenever such relevant data exists, in such detail that a reasonable patient may consider material to the decision of undergoing an elective procedure.

(c) The physician recommending or performing the abortion has in good faith formed a reasonable medical judgment, documented in the permanent record, that the abortion is medically advisable to prevent:

(1) the imminent death or serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman,

(2) other health risks arising directly from the pregnancy itself, providing that the physician has reasonably determined and documented that the preponderance of statistically validated medical studies demonstrate that the continuance of pregnancy, in such a circumstance and for such a patient, is likely to involve one or more risks to the health of the pregnant woman, excluding any associated with raising a child, that significantly exceed the combined physical, psychological, familial, and behavioral risks associated with abortion.

(d) The physician has made a good faith effort to ensure that there are no other available options that can lessen the health risks associated with continuing the pregnancy to a degree less than the health risks associated with an induced abortion.

**SECTION 5. Civil remedies.**

(a) In addition to whatever remedies are available under the common or statutory laws of this state, the intentional, knowing, or negligent failure to comply with the requirements of this act shall provide a basis for the following:

(1) Each violation of this act shall entitle the woman or her survivors to Ten Thousand Dollars (\$10,000.00) for each failure to screen for a risk

factor and for each failure to inform her of complications associated with a risk factor plus actual damages and reasonable attorney's fees and costs.

(2) Recovery for the woman for the death of her unborn child under the Wrongful Death Act, whether or not the unborn child was viable at the time the abortion, upon proving by a preponderance of evidence that the abortion provider knew or should have known that patient's consent to the abortion was either not fully informed or fully voluntary.

(b) Any action for civil remedies based on a failure to comply with the requirements of this chapter must be brought no later than the longer of four (4) years after the abortion, or two (2) years after the date woman has recovered from any psychological complications which may impede a woman's ability to pursue a civil remedy.

(c) If the physician provided a minor patient with an abortion without providing the information required in Section 3 to the minor's legal guardian the burden of proving that the minor woman was capable of maturely and independently evaluating the information given to her shall fall upon the abortion provider.

(d) If the physician provided the patient with less than forty-eight (48) hours for reflection time to comprehend and consider all the information this act requires, the burden of proving that the woman had sufficient reflection time, given her age, level of maturity, emotional state, and mental capacity shall fall upon the abortion provider.

(e) In a civil action involving this act:

(1) In determining liability and validity of consent, the failure to comply with the requirements of Section 3 shall create the rebuttable presumption that the plaintiff would not have undertaken the recommended abortion had Section 3 been complied with.

(2) The absence of physical injury shall not preclude an award of damages for emotional harm associated with the abortion.

(3) The fact that a physician does not perform elective abortions, or has not in the past, shall not automatically disqualify that physician from being an expert witness. A licensed obstetrician or family practitioner who regularly helps women in resolving pregnancy related medical matters shall presumptively be qualified to testify as an expert on the screening, counseling, management, and treatment of unwanted and/or problem pregnancies.

(4) Any abortion provider or licensed health care worker that makes referrals to a physician whose practice is inside or outside this state shall be liable for ensuring that the party to whom the abortion provider refers the patient provides a standard of screening, counseling, and care equal to or better than standard defined by Section 3.

(5) The failure to comply with the requirements of Section 3 shall create the presumption that the negligence was willful and wanton unless the defendant proves by a preponderance of evidence that a lesser mental state in fact applied.

(6) Any verbal or written waiver of liability for negligence as defined in Section 3 shall be void and unenforceable.

(f) It shall be an affirmative defense to allegations of inadequate disclosure under the standards and requirements of Section 3 of this act that the defendants omitted the contested information because statistically validated surveys of the general population of women of reproductive age, conducted within three years before or after the contested abortion, demonstrate that less than five (5) percent of women would consider the contested information to be relevant to an abortion decision or if it was the reasonable medical judgment of two licensed psychiatrists who examined the patient prior to the abortion that disclosure of the contested information would most likely cause a severe adverse effect on the physical health of the patient.

(g) In addition to whatever remedies are available under the common or statutory law of this state, a woman, or her survivors, shall have a cause of action for reckless endangerment against (a) any person who is not a licensed physician who attempts or complete an abortion on her, or (b) any person or entity who provided, distributed, or sold drugs, devices or medical advice to her with the intent to enable, assist, or encourage her in performing a self-induced abortion. Proof of injury shall not be required to recover an award for reckless endangerment under this subsection, and the minimum award for damages under this subsection shall be Eight Hundred Thousand Dollars (\$800,000) plus reasonable attorney's fees

**SECTION 6. Construction.** Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this law to make lawful an abortion that is otherwise unlawful. Nothing in this Act shall be construed as overturning or amending the provisions of Title VII, Chapter 188. Under no circumstances should any validity or invalidity of this act or any part thereof be construed so as to impair the independent scope of Title VII, Chapter 188.

**SECTION 7. Effective date.** This Act takes effect immediately upon becoming law. In the event that any portion of this act is enjoined and subsequently upheld, the statute of limitations for filing civil suit under the provisions of this statute shall be tolled during the pendency of the injunction and for four (4) years thereafter.